THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.107 OF 1998

Dated: 22-3-2007

Between :

1. Syed Amanullah Hussaini
   And 2 others. ... Petitioners

And

1. State of A.P., rep. by its Secretary to Government,
   Minorities Welfare (Wakfs) Department, Hyderabad.,
   And 3 others. ... Respondents

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WRIT PETITION NO.107 OF 1998

ORDER :

This writ petition is filed seeking a Mandamus declaring that the Notification published in the A.P. Gazette, dated 30-3-1989 under which the lands bearing Sy.Nos.1913, 1914, 1917 and 1278 of Nirmal Village and Mandal, Adilabad District, admeasuring Ac.0.30 guntas, Ac.2-35 gutnas, Ac.1-16 guntas and Ac.0-32 guntas respectively notified as wakf land under the provisions of the Wakf Act as arbitrary, illegal and without jurisdiction.

The petitioners claim that their father late Syed Anwarullah Hussaini was inamdar of the lands in question which are situated in the ayacut of Dharma Sagar Tank, Nirmal and after his death the petitioners being the legal heirs continued in possession and enjoyment of the same. While so, since a group of people were attempting to grab the said property and since there was a threat of encroachment, the petitioners filed LGC.No.33 of 1996 in the Special Court constituted under A.P. Land Grabbing (Prohibition) Act. During the pendency of the proceedings before the Special Court, it came to light that the lands in question were notified under the provisions of the Wakf Act, 1954 treating the same as wakf lands under the Notification published in the A.P. Gazette dated 30-3-1989. In the said notification, the lands in question were shown as the lands belonging to a mosque and graveyard and that the petitioner's father was described as Muthawali.

The petitioners contend that the inam in favour of their father

was not service inam, but it was mafi inam and therefore the lands cannot be treated as lands for the benefit of the mosque. Consequently the lands in question cannot be treated as wakf lands and the impugned notification notifying the same under the provisions of the Wakf Act, 1954 is arbitrary and illegal.

It is also contended that before publishing the impugned notification the petitioners who are the interested parties were not issued any notice as required under the provisions of the Wakf Act and as a matter of fact the petitioners had no knowledge about the impugned notification till 1997. Hence, on that ground also, the impugned notification is bad and liable to be set aside.

In response to the Rule Nisi ordered, the 4th respondent - Revenue Divisional Officer, Nirmal filed a counter-affidavit stating that pursuant to the impugned notification the lands in question were resumed and were handed over to the Inspector Auditor, Wakf Board, Adilabad on 18-8-1995. However, the allegation that there was no prior notice to the petitioners has not been disputed.

Even in the counter-affidavit filed on behalf of the 2nd respondent – A.P. State Wakf Board, the plea of the petitioners that no notice was served on them before publication of the impugned notification has not been denied. However, it is stated that the father of the petitioners was holding the lands as Muthawali of the Mosque and he was not an absolute owner and that since the petitioners failed to question the impugned notification within one year they are estopped from agitating the correctness of the same after a long lapse of time. At any rate, the petitioners ought to have approached the Wakf Tribunal for redressal of their grievance and the writ petition under Article 226 is not maintainable.

I have heard the learned Counsel for both the parties and perused the material on record.

The Wakf Act, 1995 has come into force w.e.f. 1-1-1996 thereby repealing the Wakf Act, 1954. Sections 4 & 5 of the Wakf Act, 1995

provide for survey of wakfs and publication of list of wakfs. Section 6 of the said Act contemplates the determination of the disputes regarding the wakfs by a Tribunal constituted under Section 83 of the Act. Under Section 4 of the Wakf Act, 1995 the survey has to be conducted by the Survey Commissioner who is required to make an enquiry as provided thereunder before submitting his report to the State Government in respect of the wakfs existing on the date of the commencement of the Act in the State or any part thereof.

Sections 4, 5 and 6 of the Repealed Act, 1954 are *in pari materia* to the provisions of Section 4, 5 and 6 of the new Wakf Act of 1995.

On a reading of the above provisions, it is clear that the Survey Commissioner has to conduct a detailed enquiry with regard to the wakf properties existing in the State before submitting a report for inclusion and registration thereof as wakf.

The specific case of the petitioners in the case on hand is that no such enquiry was conducted by the Survey Commissioner and no notice was given to the petitioners who are in actual possession of the lands in question.

As noted above, none of the respondents denied the allegation that there was no prior notice to the petitioners, however contended that no such notice is mandatory.

This Court while considering an identical question in B. GOWRA REDDY vs. GOVT. OF A.P., REVENUE DEPARTMENT, HYDERABAD[1] held that a notice is necessary to the person who is in occupation before a report is submitted by the Survey Commissioner. After reviewing the relevant decisions on the subject, it was concluded by this Court that the report submitted by the Survey Commissioner without such notice cannot be held to be in conformity with the requirements of the provisions of the Act. Having held so, this Court had rejected the objection raised by the respondents therein that the petitioners ought to have approached the Tribunal constituted

under the Act since the dispute arises out of the wakf properties. Accordingly, the notification impugned in the said writ petition was declared as invalid and was set aside.

The petitioners herein also stand on the same footing. The fact that they are the occupants of the lands in question as per the entries in the revenue records is not dispute. The allegation that there was no notice to the petitioners before the report was submitted by the Survey Commissioner has also not been denied by the respondents.

In the circumstances, following the ratio laid down in the above decision, I am of the opinion that the impugned notification which is in violation of the statutory provisions is not valid and liable to be quashed on that ground alone. Since the respondents failed to comply with the statutory obligation, the availability of the alternative remedy before the Tribunal constituted under the Act cannot be held to be a bar to grant the relief to the petitioners in exercise of the jurisdiction under Article 226 of the Constitution of India

Accordingly, the impugned notification is hereby set aside so far as the petitioners herein are concerned. The Writ Petition is accordingly allowed. No costs.

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G. ROHINI, J.

Dt. 22-3-2007
gbs

[1] 2002 (3) ALT 439